

REMARKS/ARGUMENTS

Favorable consideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 7, 13 and 19-20 are pending, with Claims 8-12 and 14-18 cancelled, Claims 7 and 13 amended, and Claims 19-20 added by way of the present amendment.

In the Official Action, Claims 7, 10 and 13 were objected to; Claims 7-18 were rejected under 35 U.S.C. § 112, second paragraph; and Claims 7-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakamura et al. (U.S. Patent No. 5,740,168, hereinafter Nakamura) in view of Hamalainen et al. (U.S. Patent No. 6,148,209, hereinafter Hamalainen).

Applicants note the present application is the subject of a Petition to Make Special. Thus, Applicants request expedited handling of this application per MPEP § 708.02(VIII).

Applicants acknowledge with appreciation the personal interview between the Examiner, the Examiner's supervisor, and Applicants' representatives on January 19, 2006 regarding co-pending application 10/796,092. While the bulk of the interview was directed to co-pending application 10/796,092, the present application was also discussed. Portions of the interview relevant to the present application are represented here.

As discussed during the interview, independent Claims 7 and 13 are amended to to clarify that the completion message is sent from the mobile to a base station or a base station controller as disclosed in Applicants' originally filed specification.<sup>1</sup> New Claims 19-20 substantially correspond to amended Claims 7 and 13. No new matter is added.

Briefly recapitulating, Claims 7, 13 and 19-20 are directed to a radio communication method of a base station and a corresponding base station apparatus used for a radio communication system employing CDMA (Code Division Multiple Access) for radio access

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<sup>1</sup> Specification, page 26, line 23 through page 29, line 29.

and providing multi-rate transmission. The radio communication system includes a base station controller, a plurality of base stations, and a plurality of mobile stations, the base station being one of the plurality of base stations. The radio communication method of Claim 19 includes steps of: transmitting the code information from the base station controlling apparatus by message to one of the plurality of mobile stations, the code information for switching from a first code being used to a second code; transmitting timing information by message to the one of the plurality of mobile stations, the timing information including an integer representing a frame at which the first code is switched to the second code; switching from the first code to the second code at the base station at the frame represented by the integer; and receiving a completion message from the one of the plurality of mobile stations indicating completion of switching from the first code being used to the second code at the one of the plurality of mobile stations at the frame represented by the integer. The invention ensures accurate synchronization of the base station and mobile.<sup>2</sup>

Nakamura describes a method for code switching, including the transmission of a timing signal from a base station to a mobile station.<sup>3</sup> However, Nakamura does not disclose or suggest “receiving a completion message from the one of the plurality of mobile stations indicating completion of switching at the one of the plurality of mobile stations at the frame represented by the integer.” As noted during the interview and as acknowledged by the Examiners, Nakamura only discloses registering the completion of switching from one code to another code by the base station and the mobile station in respective internal controllers.<sup>4</sup> No messages reporting the switching of codes are sent between the mobile and the base station.

Additionally, because Nakamura is explicit that an indication of switching completion is merely stored internally and is not sent from the mobile to the base station, Applicants

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<sup>2</sup> Specification, paragraphs 121-128.

<sup>3</sup> Nakamura, Figures 420B and 25.

<sup>4</sup> Nakamura column 7, lines 4-15.

submit that Nakamura teaches away from Applicants' claimed invention of "sending a completion message from the one of the plurality of mobile stations indicating completion of switching from the first code to the second at the one of the plurality of mobile stations" or "receiving at the base station controlling apparatus the completion message." Thus, Applicants submit that any combination that modifies the internal data registration of Nakamura to include the transmission of a completion message from a mobile to a base station is improper.

Additionally, Nakamura fails to disclose or suggest "timing information including an integer representing a frame at which the first code is switched to the second code" as recited in each of Applicants' independent claims.

Furthermore, Nakamura does not disclose or suggest a base station controlling apparatus as recited in each of Applicants' independent claims. That is, Nakamura only discloses a base station and a mobile station, without mention or suggestion of a base station controlling apparatus.

As discussed during the interview, Hamalainen does not disclose or suggest sending a code switching completion message of any kind, let alone "receiving [by a base station] a completion message from the one of the plurality of mobile stations indicating completion of switching at the one of the plurality of mobile stations at the frame represented by the integer." Hamalainen only describes the sending of a time slot assignment acknowledgement message.<sup>5</sup> Hamalainen makes no reference to switching of codes or the reporting of a completed code switching. Applicants submit that equating the time slot assignment acknowledgement message of Hamalainen with Applicants' claimed code switching completion message is an improper hindsight reconstruction of Applicants' claimed invention. Thus, assuming *arguendo* that the combination Nakamura and Hamalainen is

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<sup>5</sup> Hamalainen column 7, lines 20-26.

proper, the combination of Nakamura and Hamalainen does not disclose or suggest Applicants' claimed completion message.

Furthermore, both Nakamura and Hamalainen fail to disclose or suggest Applicants' claimed "timing information including *an integer representing a frame* at which the first code is switched to the second code."

Finally, like Nakamura, Hamalainen does not disclose or suggest Applicants' claimed base station controlling apparatus. That is, Hamalainen only discloses a base station and a mobile station.

MPEP §706.02(j) notes that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Also, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Without addressing the first two prongs of the test of obviousness, Applicants submit that the Official Action does not present a *prima facie* case of obviousness because both Nakamura and Hamalainen fail to disclose all the features of recited in Applicants' claimed invention.

The preceding comments are primarily directed to elements recited in new Claim 19. Applicants submit that Claims 7, 13 and 20 distinguish over the previously discussed references for substantially the same reasons.

Accordingly, in view of the present amendment and in light of the previous discussion, Applicant respectfully submit that the present application is in condition for allowance and respectfully request an early and favorable action to that effect.

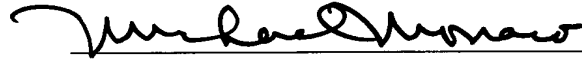
Respectfully submitted,

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